

ATTACHMENT A



MULTISTATE TAX COMMISSION

Working together since 1967 to preserve federalism and tax fairness

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Policy Statement 01-2011

Policy Statement in Support of Telecommunications Reform

In 1996, Congress enacted the Telecommunications Act of 1996, a sweeping overhaul of the Communications Act of 1934. Among other reforms, the Act developed a three-category regime that distinguishes between “telecommunication services”, “cable services” and “Internet services”, each subject to its own regulations. For example, video programming services provided by telecommunication companies on a common carrier basis are governed by a different set of regulations than video programming provided by a cable company or an Internet provider.¹ It is the different means by which the services are delivered, not the services themselves, that places them into one category or another.

Though states were assured that the 1996 Act was not meant to apply to state and local taxation of telecommunications services, there were some provisions of the Act that could have been interpreted to apply to state and local tax laws. A case in point was the then-new 47 U.S.C. §253, Removal of Barriers to Entry. This section generally provided that no state or local statute, regulation or other legal requirement may effectively act as a barrier for any entity’s ability to provide intrastate or interstate telecommunications services. Since the provision could easily be construed to apply to state and local tax laws, the states sought and received a state tax savings provision:

Sec. 601(c)(2). State Tax Savings Provision.—Notwithstanding paragraph (1), nothing in this Act or the amendments made by this Act shall be construed to modify, impair or supersede or authorize the modification, impairment or supersession of, any State or local law pertaining to taxation, except as provided in sections 622 and 653(c) of the Communications Act of 1934 and section 602 of this Act.²

¹ 1996 Act, § 302

² Section 662 of the 1934 Act (47 U.S.C. §542) provides that a franchise fee imposed on cable operators may not exceed 5% of gross revenue for any 12-month period; §653(c)(2)(b) (47 U.S.C. 573); and §602 of the 1996 Act preempts local governments from taxing direct-to-home satellite service.

There have been efforts in recent years, at the federal, state, and local levels, to further update telecommunications regulation and taxation. With respect to federal efforts, it is important that any future legislation contain a state and local tax savings provision so as not to pre-empt state and local authority to tax telecommunication services, and to respect the federalism principles that serve as the cornerstone of our Nation's system of government.

But telecommunications reform does not stop at the federal level. With respect to state and local efforts, the Commission supports continued cooperative endeavors at the state and local levels to improve telecommunications tax laws that are sometimes arcane and in need of revision. . The telecommunications industry and the states have had many discussions to explore ways to improve the taxation of telecommunications at the state and local level. These discussions have been productive, and serve to highlight the level of cooperation between states, local governments and the telecommunications industry in finding solutions to improve telecommunications taxation. Such cooperative effort have borne fruit in the past, such as the Mobile Telecommunications Sourcing Act in 2000, which simplifies state transactional taxes of mobile telecommunications services. Other efforts include the Streamlined Sales and Use Tax Agreement, with its provisions on uniform sourcing and definitions of telecommunications services. The Multistate Tax Commission is developing a telecommunications tax centralized administration model for states to use in their own telecommunications reform efforts.

This Policy Statement will expire at the Multistate Tax Commission Annual Meeting in 2016.